

Message Text

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TO AMEMBASSY OTTAWA

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E.O. 11652: N/A

TAGS: ETRD, CA

SUBJECT: REVIEW OF CROSSARM RECLASSIFICATION BY DEPARTMENT
OF NATIONAL REVENUE

IN RESPONSE TO A REQUEST FROM MRS. MACGREGOR OF THE DEPART-
MENT OF NATIONAL REVENUE (DNR) THE EMBASSY IS REQUESTED TO
PRESENT THE FOLLOWING ARGUMENTS OF THE U.S. GOVERNMENT
REGARDING THE RECLASSIFICATION OF CROSSARMS.
(BEGIN TEXT)

1. CROSSARMS SUCH AS THOSE CASCADIAN MAKES FOR BRITISH
COLUMBIA HYDRO AND POWER AUTHORITY AND MANITOBA HYDRO,
WHILE BASED ON SPECIFICATION DRAWINGS, ARE DRILLED BUT NOT
FURTHER MANUFACTURED THAN THE PRODUCT OF A PLANNING
MACHINE. SINCE THIS IS IN EXACT ACCORDANCE WITH THE
DESCRIPTION SET FORTH IN TARIFF ITEM 50050-1 OF THE
CANADIAN TARIFF SCHEDULE, CROSSARMS PROPERLY BELONG IN THAT
TARIFF ITEM. THIS WAS THE US UNDERSTANDING WHEN WE PAID
FOR THESE CONCESSIONS WITH RECIPROCAL CONCESSIONS IN THE
KENNEDY ROUND.

2. THE DEPARTMENT OF NATIONAL REVENUE (DNR) MAINTAINS
THAT THE TERM "DRILLED" IN ITEM 50050-1 IS TO BE
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REDEFINED SO AS TO BE MORE IN LINE WITH THE U.S. DEFINITION

OF DRILLED CONTAINED IN SCHEDULE 2, PART 1, SUBPART B OF THE TARIFF SCHEDULES OF THE UNITED STATES. WHILE THIS ATTEMPT TO RELATE THE CANADIAN DEFINITION TO THE U.S. DEFINITION MAY BE RELEVANT BECAUSE OF THE RECIPROCAL NATURE OF MANY OF THE CONCESSIONS ON LUMBER AND WOOD PRODUCTS IN THE KENNEDY ROUND, THE MOST IMPORTANT FACTOR CONTINUES TO BE THE LITERAL DESCRIPTION OF THE CANADIAN TARIFF ITEM. EVEN IF WE WERE TO GO BEYOND THE LITERAL DESCRIPTION, HOWEVER, THE U.S. DEFINITION OF "DRILLED" DOES NOT SUPPORT THE CANADIAN POSITION IN THIS CASE. THE DNR HAS INDICATED TO U.S. OFFICIALS THAT CANADA INTENDS TO CONFINE DRILLING TO "DRILLED AT INTERVALS FOR NAILS, SCREWS, OR BOLTS..." IN LINE WITH THE US DEFINITION OF DRILLING IN SCHEDULE 2, PART 1, SUBPART B. HOWEVER, THE U.S. DEFINITION OF "DRILLING" DOES NOT REFER TO DRILLING ONLY AT RANDOM INTERVALS ALTHOUGH THIS TYPE OF DRILLING WOULD ALSO BE INCLUDED IN THE U.S. DEFINITION. SINCE THE DEFINITION IS NOT LIMITED TO RANDOM INTERVALS (INDEED ONE WONDERS WHO WOULD WANT WOOD WITH HOLES DRILLED COMPLETELY AT RANDOM), THE DRILLING AT INTERVALS MUST CORRESPOND TO SOME TYPE OF PREDETERMINED USE. THE INTERVAL IS DETERMINED BY THE USE AND THE RELATED SPECIFICATIONS. THEREFORE, DRILLING IN THE U.S. VIEW INCLUDES DRILLING WHERE MANUFACTURER SPECIFICATIONS DETERMINE THE INTERVALS AND RELATIVE POSITIONS OF THE DRILLED HOLES.

3. THE FACT THAT THE HOLES ARE DRILLED AT SPECIFIED INTERVALS SHOULD NOT BE CONSTRUED TO CONSTITUTE THE DIFFERENCE BETWEEN A MATERIAL AND A MANUFACTURED PRODUCT. FURTHER, WE FAIL TO SEE HOW THE MATERIAL/MANUFACTURED GOODS DISTINCTION CAN BE USED AS A BASIS FOR TARIFF CLASSIFICATION WHEN THE TARIFF SCHEDULE FAILS TO SET OUT PRECISE CRITERIA FOR THAT DISTINCTION.

4. IN A LETTER DATED DECEMBER 31, 1970, F.H. DAVIS, DOMINION CUSTOMS APPRAISER FOR THE DEPARTMENT OF NATIONAL REVENUE, INFORMED MR. GRANT BURKMAN OF THE CASCADIAN CO., INC. THAT CROSSARMS ARE ADMISSABLE UNDER TARIFF ITEM UNCLASSIFIED

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50050-1, FREE OF DUTY UNDER THE MOST FAVORED NATION TARIFF. ON NOVEMBER 7, 1975, DNR ADVISED MR. BURKMAN THAT CROSSARMS ARE NOW CONSIDERED DUTIABLE UNDER TARIFF ITEM 50600-1 AT 15 PERCENT AD VALOREM. INDEPENDENT OF THE LEGAL ARGUMENTS INVOLVED THE FACT THAT OVER A PERIOD OF MANY YEARS THESE ARTICLES WERE TREATED AS BELONGING TO TARIFF CLASSIFICATION 50050-1 CASTS DOUBT ON THE EQUITY OF SUCH A RECLASSIFICATION, PARTICULARLY IN THIS

CASE WHERE MR. BURKMAN RELIED ON WHAT APPEARED TO BE A VERY REASONABLE INTERPRETATION BY A CANADIAN CUSTOMS OFFICIAL.

5. A USEFUL PARALLEL CAN BE DRAWN BETWEEN THE SITUATION NOW EXISTING WITH RESPECT TO CROSSARMS AND A RECENT DECLARATION BY THE TARIFF BOARD (APPEAL NO. 1104, DATED JANUARY 19, 1976). IN THIS DECISION THE TARIFF BOARD DECIDED THAT TONGUED AND GROOVED PLYWOOD SHOULD NOT BE CLASSIFIED UNDER TARIFF ITEM 50600-1 MANUFACTURES OF WOOD, N.O.P. THE TARIFF BOARD STATED "THERE IS NO QUESTION THAT PLYWOOD, IS A MANUFACTURE OF WOOD; BUT IT IS A MANUFACTURE OF WOOD WHICH IS OTHERWISE SPECIFICALLY PROVIDED FOR IN THE CUSTOMS TARIFF UNDER A CLASSIFICATION OF ITS OWN - PLYWOOD." THE BOARD FOUND THEREFORE THAT PLYWOOD WAS PROPERLY CLASSIFIED IN TARIFF ITEM 50715-1.

6. IT IS THE OPINION OF THE UNITED STATES GOVERNMENT THAT THE TARIFF BOARD WOULD RENDER A SIMILAR DECISION IN THE CASE OF CROSSARMS. CROSSARMS ARE SPECIFICALLY PROVIDED FOR IN THE CUSTOMS TARIFF IN TARIFF ITEM 50050-1. A CROSSARM IS "TIMBER OR LUMBER OF SOFTWOOD... DRILLED BUT NOT OTHERWISE FURTHER MANUFACTURED THAN THE PRODUCT OF A PLANNING MACHINE...." (END TEXT) ROBINSON

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